

E. L. DIVY DIVNICK
FLOYD VIPOND

IBLA 82-661

Decided June 8, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 123341 through N MC 123350.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: E. L. Divy Divnick, Floyd Vipond, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

E. L. Divy Divnick and Floyd Vipond appeal the March 2, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Change, Change Nos. 1 through 6, and I O U lode mining claims, and Nugget and Congress placer mining claims, N MC 123341 through N MC 123350, abandoned and void because no proof of labor or notice of intent to hold was filed with BLM during 1981 as required by 43 CFR 3833.2.

Appellants state they were misadvised and thought they were required to file their proof of labor with BLM during the latter half of December, rather

than immediately after completing the assessment work and recording with the county. They state the proof of labor for 1981 was placed in the mails during the evening of December 29, 1981, which they thought was compliance with the requirements for recordation. They concede the envelope was postmarked January 4, 1982, and delivered to BLM January 6, 1982. They argue that the delay was occasioned by the heavy mails of the holiday season.

The claims were located between 1931 and 1941. Copies of the location notices were filed with BLM October 22, 1979. Proofs of labor were filed with BLM October 22, 1979, December 11, 1980, and January 6, 1982.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intent to hold the claim on or before October 22, 1979, and on or before December 30 of each year thereafter. Such filings must be made both in the county office where the location notice is of record, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or of a notice of intent to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Calaho Mining Co., 63 IBLA 5 (1982); Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellants. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*. In Lynn Keith, the Board held

[t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

The fact that appellants may have misunderstood the time for recordation under FLPMA, while unfortunate, does not excuse them from compliance. Those who deal with the Government are presumed to have knowledge of the relevant statutes and the regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

The envelope containing the 1981 proof of labor bears a postmark of January 4, 1982, notwithstanding appellants' assertion that the envelope was mailed December 29, 1981. The Board has held repeatedly that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filings. Tako Mining, 63 IBLA 206 (1982); Everett Yount, 46 IBLA 74 (1980); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper office of BLM. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Where BLM did not receive timely either evidence of annual assessment work or a notice of intent to hold the claims, BLM properly declared the claims abandoned and void. The Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

